

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of the Exception to the Assigned
Service Area Agreement Between Northern
States Power Company d/b/a Xcel Energy and
Wright-Hennepin Cooperative Electric
Association

ISSUE DATE: October 17, 2001

DOCKET NO. E-002, 148/SA-01-1123

ORDER REJECTING CHALLENGE TO
EXCEPTION AGREEMENT

PROCEDURAL HISTORY

On June 13, 2001, Sunnybrook Development, L.L.C. (Sunnybrook) filed a letter objecting to an agreement between Northern States Power Company d/b/a Xcel Energy (Xcel) and Wright-Hennepin Cooperative Electric Association (Wright-Hennepin) to change the utility providing electric service to portions of a housing development owned by Sunnybrook. On July 25, 2001, Xcel and Wright-Hennepin filed the agreement under Minn. Stat. § 216B.40, a statute permitting utilities to serve customers within another utility's assigned service area upon written agreement.

Under the terms of the agreement, Wright-Hennepin would serve eight residential homes in the development that were within Xcel's assigned service area, and Xcel would serve seven residential homes in the development that were within Wright-Hennepin's assigned service area. The utilities stated that these service arrangements would avoid unnecessary duplication of facilities and assign service rights in each case to the utility that was better-positioned to serve.

Between August 3 and August 27, 2001, Sunnybrook, Xcel, Wright-Hennepin, and the Minnesota Department of Commerce filed comments on the agreement. Sunnybrook's comments clarified that it not only opposed the agreement but claimed that the entire Sunnybrook development should be placed within Xcel's assigned service area.

The agreement came before the Commission on September 20, 2001.

FINDINGS AND CONCLUSIONS

I. Factual and Statutory Background

A. Assigned Service Areas

In 1974 the Minnesota Legislature determined that the orderly development of economical statewide electric service required granting electric utilities exclusive service rights within designated service areas:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.¹

The Commission was required to establish assigned service areas for all electric utilities by April 12, 1975 and to prepare official service area maps showing the boundaries of the service areas established. To expedite this process, the statute encouraged utilities to reach agreements on service area boundaries and to submit them to the Commission for approval and ratification.² That is how the service area boundaries between Xcel and Wright-Hennepin were set.

The Legislature recognized that service areas would require adjustment over time; it therefore authorized the Commission to make boundary changes after notice and hearing when the public interest required it.³ It authorized utilities to serve customers within one another's service areas by agreement.⁴ It authorized municipal utilities to expand their service areas as their corporate boundaries expanded.⁵ And it authorized the Commission to assign large customers located outside municipalities to utilities other than the one in whose service area they were located.⁶

¹ Minn. Stat. § 216B.37.

² Minn. Stat. § 216B.39, subd. 4.

³ Minn. Stat. § 216B.39, subd. 3.

⁴ Minn. Stat. § 216B.40.

⁵ Minn. Stat. § 216B.44.

⁶ Minn. Stat. § 216B.42.

With these narrow exceptions, however, assigned service areas were to be strictly observed, for public policy reasons the Commission has articulated as follows:

Exclusive service arrangements have long been required in Minnesota for compelling public policy reasons. The Legislature has found them necessary to encourage the development of coordinated statewide electric service, to eliminate or avoid unnecessary duplication of utility facilities, and to promote economical, efficient, and adequate electric service to the public. Minn. Stat. § 216B.37.

The contribution of exclusive service arrangements to avoiding duplication of facilities and to promoting coordinated electric service is obvious. Less obvious, but even more important, is their contribution to ensuring reliable and adequate service throughout the state.

The generation, transmission, and distribution of electricity is an extremely capital-intensive business. To meet the needs of their customers, utilities must be willing and able to commit large amounts of capital to building and maintaining the facilities necessary to deliver power throughout their service territories and to all their customers. Since power plants require years of planning and construction, utilities must also be willing to commit these resources years in advance of actual need. . . .⁷

.....

Historically, exclusive service arrangements have been the *quid pro quo* for utilities' obligations to build, buy, or lease the capacity necessary to serve all comers. That is why the Legislature considered exclusive service arrangements essential to the development of reliable and adequate electric service throughout the state.⁸

B. The Customer at Issue

Sunnybrook Development is constructing a residential subdivision on a 54.4-acre parcel of land that it owns within the City of Minnetrista. The boundary line between Xcel's assigned service area and Wright-Hennepin's assigned service area runs through the parcel, placing some lots within Xcel's territory and others within Wright-Hennepin's.

⁷ See Minn. Stat. § 216B.04, requiring public utilities to provide service within 90 days of any application for service.

⁸ In the Matter of the Petition of Inland Steel Mining Company and Northern Electric Cooperative Association for Approval of the Purchase and Sale of Electricity at Retail, Docket No. E-130/SA-95-1262, ORDER DENYING PETITION (August 13, 1996) at 13-14.

Sunnybrook states that it did not know that Wright-Hennepin was the assigned utility for parts of the parcel, because previously the parcel had had only one structure, which was within Xcel's service area and served by Xcel. The company finds dealing with more than one utility burdensome. It would prefer to deal with a single utility and would prefer that that utility be Xcel, because Xcel provides more free underground footage for new service extensions than Wright-Hennepin. Installing underground electric service to a lot served by Wright-Hennepin costs \$300 more than installing underground electric service to a lot served by Xcel.

II. Positions of the Parties

A. Sunnybrook Development

Sunnybrook argues that the Commission should place its entire 54.4-acre parcel within Xcel's service area on the basis of the following claims:

- (1) Dealing with two utilities is burdensome.
- (2) The utilities' claim that their customer-exchange agreement would prevent duplication of facilities is incorrect.
- (3) The boundary line between Xcel and Wright-Hennepin was originally drawn incorrectly – had it been drawn correctly, it would have followed Sunnybrook's property line and placed its entire parcel within Xcel's assigned service area.

B. The Utilities

The utilities stated that their customer-exchange agreement would prevent the unnecessary duplication of some 4,500 feet of underground electric cable, plus associated grounds, splices, and other hardware. They pointed out that avoiding unnecessary duplication of facilities not only helps keep utility rates affordable but preserves right-of-way capacity and reduces the public safety risks posed by electric lines.

They also denied that the boundary line running through the Sunnybrook development was incorrectly drawn. While the 1974 service area boundaries were drawn hurriedly to comply with a twelve-month statutory deadline,⁹ the resulting errors were corrected by Commission Order in 1986, following a two-year review of boundary lines by utilities and regulatory agencies. The line running through the Sunnybrook development was not identified as incorrect then, and they do not consider it incorrect now.

⁹ Minn. Stat. § 216B.39, subd. 2.

C. The Department of Commerce (the Department)

The Department filed initial comments stating that, while it did not have enough information to make final recommendations, the information provided to date did not appear to support changing the agreement filed by the utilities. At hearing the Department stated that it recommended approving the agreement. (The Department agreed to forgo written reply comments because the parties needed a decision before the end of the construction season.)

III. Commission Action

The Commission rejects Sunnybrook's claim that the service area boundary running through its property was improperly drawn and should be corrected. The Commission will not set aside the exception agreement between Xcel and Wright-Hennepin. These actions are explained below.

A. Boundary Not Invalid for Failure to Follow Sunnybrook's Property Line

Sunnybrook contended that the service area boundary running through its property was improperly drawn and should be corrected to place its entire parcel within Xcel's assigned service area. The company based this argument on three claims:

- (1) An examination of the service area boundary north and south of the Sunnybrook property shows that the line tends to follow property boundaries, suggesting that the two utilities were making an effort to follow property lines and erred here.
- (2) An examination of the service area boundary north and south of the Sunnybrook property shows that the line tends to follow the Metropolitan Urban Service Area (MUSA) line developed by the Metropolitan Council and/or the quarter section line. Although the MUSA line ran through Sunnybrook's property at the time the service area map was drawn, the Metropolitan Council has since stated that the line should follow property boundaries.
- (3) Guidelines in the service area statute provide for the boundary between utilities to be "a line equidistant between the electric lines of adjacent electric utilities as they exist on April 12, 1974," with adjustments for natural and other physical barriers. Minn. Stat. § 216B.39, subd. 3. An equidistant line drawn to honor property lines would place all of Sunnybrook's property within Xcel's assigned service area.

The Commission finds that there is no reasonable basis to conclude that this service area boundary was erroneously drawn or is currently invalid for failure to follow Sunnybrook's property line.

The original boundary line was set by agreement between Xcel and Wright-Hennepin, as authorized by the Public Utilities Act.¹⁰ The agreement was duly examined and approved by the Commission as consistent with the assigned service area provisions of that Act. The original agreement was subsequently re-examined by the utilities and amended to correct mapping anomalies and errors. The amended agreement, too, was approved by the Commission under the Act.

Neither the original nor the amended service area agreement states that the boundary between these two utilities would follow property lines. There is no legal requirement for the boundary to follow property lines. The utilities deny that it was their intention to invariably follow property lines.

For all these reasons, the Commission rejects the claim that the boundary at issue was set by mistake and should be corrected to follow Sunnybrook's property line.

B. Boundary Not Invalid for Failure to Follow "Equidistant Line" Rule

The Commission rejects Sunnybrook's claims that the "equidistant line" provisions of Minn. Stat. § 216B.39, subd. 3 apply here and that they must be read to require the equidistant line to follow property lines. Subdivision three reads as follows:

To the extent that it is not inconsistent with the legislative policy stated in section 216B.37, the boundaries of each assigned service area, outside of incorporated municipalities, shall be a line equidistant between the electric lines of adjacent electric utilities as they exist on April 12, 1974; provided that these boundaries may be modified by the commission to take account of natural and other physical barriers including, but not limited to, highways, waterways, railways, major bluffs, and ravines and shall be modified to take account of the contracts provided for in subdivision 4; and provided further that at any time after April 12, 1974, the commission may on its own or at the request of an electric utility make changes in the boundaries of the assigned service areas, but only after notice and hearing as provided for in sections 216B.17 and 216B.18.

Minn. Stat § 216B.39, subd. 3.

First, the statutory language does not support the claim that the equidistant lines to which it refers must follow property lines. There is no direct reference to following property lines, and the "natural and other physical barriers" which the statute cites as exceptions to the rule – highways, waterways, railways, major bluffs, ravines – are all substantially less mutable than property lines. The emphasis is clearly on physical barriers and the engineering issues they create, not ownership issues.

¹⁰ Minn. Stat. § 216B.39, subd. 4.

Second and more importantly, the statute requires that boundaries set to follow equidistant lines “shall be modified to take account of the contracts provided for in subdivision 4.” The Xcel/Wright-Hennepin service area agreement is just such a contract. Therefore, even if an equidistant line drawn in accordance with subdivision 3 happened to coincide with Sunnybrook’s property line (which it would not), the Xcel/Wright-Hennepin contract would supersede it.

For all these reasons, the Commission concludes that the boundary line running through Sunnybrook’s property was not improperly set or improperly approved.

C. Exception Agreement Permitted to Take Effect

The Public Utilities Act permits a utility to provide service within another utility’s service area if the second utility “consents thereto in writing.”¹¹ These consensual service arrangements, called “service by exception,” are common. Shifts in population and property use often make it more efficient for a neighboring utility, rather than the assigned utility, to serve customers on the assigned utility’s periphery. Exception agreements therefore normally take effect without Commission action.

Here the utilities have stated without contradiction that the customer exchange at issue will prevent the duplication of some 4,500 feet of underground electric cable, plus associated grounds, splices, and other hardware. Clearly, preventing the unnecessary duplication of this 4,500 feet of underground cable promotes the purposes for which the Legislature established assigned service areas – to encourage coordination between electric utilities, to avoid unnecessary duplication of facilities, and to promote economical, efficient, and adequate service to the public.¹²

Sunnybrook points out that both utilities will still have facilities in the area – both have electric lines running along the road to the north of Sunnybrook’s property – and suggests that this invalidates their claim that they are preventing the unnecessary duplication of facilities. The Commission disagrees. Neither the Public Utilities Act nor Commission precedent suggests that *all* duplication of facilities is avoidable. It is the unnecessary duplication of facilities that the statute targets, and it is the unnecessary duplication of facilities that this exception agreement would prevent.

Finally, the Commission rejects Sunnybrook’s claim that dealing with two utilities to develop this subdivision, and paying \$300 more per lot for electric service for lots served by Wright-Hennepin, are so burdensome as to require rejection of the exception agreement on public interest grounds.

¹¹ Minn. Stat. § 216B.40.

¹² Minn. Stat. § 216B.37.

While it is less convenient to deal with two utilities than with one, Sunnybrook has not produced any evidence that the presence of two utilities has caused it real hardship – its main objection to having two utilities is having to pay the \$300 per lot rate differential for lots served by Wright-Hennepin. Rate differentials, as the Commission has stated repeatedly in the past, are weak grounds for changing, or refusing to change, service assignments:

The Commission has consistently taken the position that rate differences by themselves are not good cause for making boundary changes. For the same reasons, they are not by themselves good cause for refusing to make boundary changes that are in the public interest.

Utility rates are not static. They vary over time due to complex and interrelated factors, such as economic conditions at the time major investments were required, rates of growth in the utility's service area, fuel source proximity, and other factors. These factors affect utilities in different ways at different times, making rate discrepancies normal. Over time, every utility's rates will vary in relation to those of other utilities. . . .

In short, basing service area assignments on rate differences is generally self-defeating. It is sounder regulatory policy to base service area decisions on factors which affect cost and quality of service over the long term . . . ¹³

Not only are rate-inspired service assignments ultimately self-defeating, but they defeat the broader purposes of assigned service areas:

The Commission does not rule out the potential relevance of customer preference, where that preference goes to the statutory factors affecting service area determinations.

Generally, however, the Commission's focus must be on the effect of proposed service area changes on the coordinated, efficient delivery of adequate electric service throughout the state. The statute assumes, and the Commission agrees, that the interests of individual customers are best served by ensuring the statewide availability of high quality, economical electric service.

¹³ In the Matter of a Request from Southwestern Minnesota Cooperative Electric and Luverne Municipal Utility to Adjust Their Mutual Service Territory Boundary, Docket No. E-140, 268/SA-91-87, ORDER APPROVING CHANGE IN ASSIGNED SERVICE AREAS (September 19, 1991) at 6.

The existence of multiple utilities guarantees that there will be rate differences and other perceived differences which will lead customers in individual cases to desire service from a utility other than the one assigned. The statewide need for service area stability, however, discussed below, generally precludes granting such requests. . . .¹⁴

The Commission continues to believe that as long as electric service is provided by utilities with the exclusive right to serve all customers within their assigned service areas, rate differentials are an extremely problematic basis for service assignments.

For all the reasons set forth above, the Commission finds that the exception agreement submitted by Northern States Power Company d/b/a Xcel Energy and Wright-Hennepin Cooperative Electric Association should be permitted to take effect.

ORDER

1. The exception agreement submitted by Northern States Power Company d/b/a Xcel Energy and Wright-Hennepin Cooperative Electric Association is hereby accepted and permitted to take effect.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

¹⁴ In the Matter of the Petition of Northern States Power Company to Amend the Electric Service Area Boundary with Minnesota Valley Cooperative Light and Power Association in Montevideo, Minnesota, Docket No. E-002, 123/SA-89-1092, ORDER DENYING PETITION, AND DENYING COUNTER PETITION AND COMPLAINT IN PART (July 25, 1990) at 7.